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CHAPTER 7

International Organizations

A. UNITED NATIONS

1. UN Security Council

On October 16, 2014, after the UN General Assembly elected Angola, Malaysia, New Zealand, Spain, and Venezuela as non-permanent members of the UN Security Council for 2015-2016, Ambassador Samantha Power, U.S. Permanent Representative to the UN, delivered a statement, available at *http://usun.state.gov/briefing/statements/233035.htm*. Ambassador Power's statement includes the following regarding U.S. concerns about the election of Venezuela in particular:

> The UN Charter makes clear that candidates for membership on the Security Council should be contributors to the maintenance of international peace and security and support the other purposes of the UN, including promoting universal respect for human rights. Regional groups have a responsibility to put forward candidates that satisfy these criteria and fully support the principles of the UN Charter. This year, Venezuela ran unopposed for the 2015-2016 Latin American seat.
>
> Unfortunately, Venezuela's conduct at the UN has run counter to the spirit of the UN Charter and its violations of human rights at home are at odds with the Charter's letter. The United States will continue to call upon the government of Venezuela to respect the fundamental freedoms and universal human rights of its people.
>
> From ISIL and Ebola to Mali and the Central African Republic, the Security Council must meet its responsibilities by uniting to meet common threats. All members of the Council have an obligation to meet the expectations of those who have entrusted them with these critical responsibilities

2. Charter Committee

On October 14, 2014, John Arbogast, Counselor for Legal Affairs for the U.S. Mission to the UN, delivered remarks at the 69th General Assembly Sixth Committee (Legal) on the Report of the Special Committee on the Charter of the Role of the Organization. Mr. Arbogast's remarks are excerpted below and available at *http://usun.state.gov/briefing/statements/233274.htm*.

* * * *

Mr. Chairman, we welcome consideration of the report of the Charter Committee, which had its annual meeting in February. We appreciate the opportunity to provide a few observations on the Committee's recent work.

We believe the report records some positive movement in the work of the Charter Committee, particularly as it reflects a continuing examination of the matters with which the Committee should concern itself. The 2012 commemoration of the thirtieth anniversary of the Manila Declaration, dealing with the peaceful settlement of disputes, was again cited as an example of a timely undertaking that was appropriate for Committee consideration and on which it could agree. The "third country effects of sanctions" item on the Committee agenda, on the other hand, was again cited by many as an example of an item that had been overtaken by events and whose continued inclusion on the agenda makes little sense.

I will return to that matter in a minute, as the issue of third country effects provides a window into the areas of Special Committee efficiency and working methods. A key aspect of Committee efficiency is the fact that the Charter Committee has a number of longstanding proposals before it. We believe—as we have stated many times before—that many of the issues these proposals consider have been taken up and addressed elsewhere in the United Nations. There is also a considerable degree of overlap in these proposals. These are reasons why the Committee has shown little enthusiasm for acting on or discussing these proposals in depth.

It was heartening that during the 2012 Charter Committee session, two such longstanding proposals were withdrawn or set aside by their sponsors on the grounds that they were, in fact, outdated and had been overtaken by events elsewhere in the Organization. This was a welcome step toward the much-needed rationalization of the work of the Special Committee. It is hoped that other stagnant items on the Committee's agenda will be similarly scrutinized by sponsors and members alike, with a view toward keeping the Charter Committee relevant and potentially useful.

Such continuing review efforts are vital for the Special Committee as it goes forward. We urge that the Committee continue to remain focused on ways to improve its efficiency and productivity throughout its next session, including by giving serious consideration to such steps as biennial meetings and/or shortened sessions. The Committee needs to do its job by recognizing that these steps are reasonable and make good practical sense.

With regard to items on the Committee's agenda concerning international peace and security, the United States continues to believe that the Committee should not pursue activities in this area that would be duplicative or inconsistent with the roles of the principal organs of the

United Nations as set forth in the Charter. This includes consideration of a further revised working paper calling for a new, open-ended working group "to study the proper implementation of the Charter…with respect to the functional relationship of its organs." It also includes consideration of another revised, longstanding working paper that similarly calls inter alia for a Charter Committee legal study of General Assembly functions and powers.

In the area of sanctions, we note once again that positive developments have occurred elsewhere in the United Nations that are designed to ensure that the UN system of targeted sanctions remains a robust tool for combating threats to international peace and security. With respect to the aforementioned matter of third States affected by the application of sanctions, as stated in the Secretary-General's report A/69/119, "…the need to explore practical and effective measures of assistance to the affected third States has been reduced considerably because the shift from comprehensive to targeted sanctions has reduced the incidence of unintended harm to third States. In fact, no official appeals by third States to monitor or evaluate unintended adverse impacts on non-targeted countries have been conveyed to the Department of Economic and Social Affairs since June 2003."

Such being the case, and as touched on above, we believe that this is another prime example of an issue that the Special Committee—with an eye both on the current reality of the situation and the need to stay current in terms of the matters it considers—should decide no longer merits discussion in the Committee. This initiative has received increasing support in the Special Committee and we hope that this step can be taken in the near future.

Having said that, we would note a positive development regarding this issue reflected in resolution 68/115, the resolution on the Charter Committee that was adopted by the General Assembly in December. Paragraph 3(b) of that resolution requests the Special Committee to continue to consider the third State-related sanctions issue in an appropriate manner and framework, including—and I quote—"the frequency of its consideration." What that additional language reflects is a balance between the views of those who believe that this issue is no longer appropriate for Committee consideration and those who believe that the issue should be kept on the Special Committee's agenda in the event of changed circumstances in future. The language reflects a compromise which would permit the issue to remain on the agenda (at least for now), while dispatching with the need to have the Committee consider it—and have the Secretary-General produce reports on it—every year, even though there have been no pertinent developments concerning it.

Accordingly, in the spirit of compromise reflected in the GA resolution, we believe that the triennalization of this issue, at a minimum, should be discussed and hopefully agreed at the next meeting of the Special Committee.

On the question of the General Assembly requesting an advisory opinion on the use of force from the International Court of Justice, we have consistently stated that the United States does not support that proposal.

With respect to proposals regarding new subjects that might warrant consideration by the Special Committee, we continue to be cautious about adding new items to the Committee's agenda. While the United States is not opposed in principle to exploring new items, it is our position that they should be practical, non-political, and not duplicate efforts elsewhere in the UN system.

In this regard, we refer to the proposals made at the Committee's last meeting to have the Committee request the Secretariat to update the 1992 Handbook on the Peaceful Settlement of Disputes between States, and to establish a website also dedicated to the peaceful settlement of

disputes. We are of the view that such new, labor-intensive exercises would not be the best use of scarce Secretariat resources, and at the end of the day would not, in any event, offer much value-added given the wealth of relevant websites and other online tools that make such information so much more readily available than in the past.

Finally, we welcome the Secretary-General's report A/69/159, regarding the Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council. We commend the Secretary-General's ongoing efforts to reduce the backlog in preparing these works. Both publications provide a useful resource on the practice of United Nations organs, and we much appreciate the Secretariat's hard work on them.

* * * *

3. Israel's Participation in the UN

On February 11, 2014, Ambassador Power delivered a statement on Israel's participation in the "JUSCANZ" caucus in the UN Third Committee. Ambassador Power's statement follows and is also available at *http://usun.state.gov/briefing/statements/221567.htm*.

> Today, for the first time, Israel participated in one of the core coordinating groups focused on human rights and social policy at the United Nations. Israel's participation in the "JUSCANZ" caucus in the United Nation's Third Committee is an important step toward securing Israel's full participation across the UN system.
>
> The United States has long been a tireless advocate for Israel's full participation and inclusion at the UN. Today's inclusion, coupled with our successful efforts to secure Israel's membership in the Western European and Others Group (WEOG) last November in Geneva, are important steps in the right direction. Israel is now able to fully participate in the main regional and core coordinating groups in New York and Geneva where much of the behind-the-scenes work at the UN gets done.
>
> While more work remains, the United States will combat every effort to undermine Israel's legitimacy as a full and equal member of the community of nations, including by ending the various forms of structural discrimination against Israel throughout the UN system.

4. UN Women

On September 16, 2014, Terri Robl, U.S. Deputy Representative to ECOSOC, addressed the UN Women Executive Board in New York. Ms. Robl's remarks are excerpted below and are available at *http://usun.state.gov/briefing/statements/231792.htm*. For background on UN Women, see *Digest 2010* at 323-24.

* * * *

…The United States strongly supports UN Women's strategic priorities and welcomes its accomplishments to date.

UN Women's leadership within the UN system is beginning to produce impressive outcomes. We especially welcome UN Women's leadership and advocacy on the importance of women's and girls' empowerment and gender equality as central to our shared development goals, especially as we continue deliberations on the post-2015 development agenda.

We are very pleased by the initial results of the System Wide Action Plan, which seeks to introduce a gender perspective into all UN political programs. We are heartened by the reports of substantial improvement in the performance of the United Nations system on gender mainstreaming through this plan. According to reports, in just its second year of effective implementation, advancements occurred in 14 of the 15 performance indicators, including notable steps forward in gender-responsive auditing, performance management, program review and knowledge generation.

We are satisfied to note UN Women's increasing engagement in humanitarian activities, including the training of field advisors and we would like to see UN Women's valuable contributions to the Secretary General's humanitarian situation reports continue. We welcome the gender study that UN Women is conducting for the humanitarian segment of ECOSOC and are pleased it is also collaborating with women's groups and civil society on the upcoming World Humanitarian Summit. The United States supports UN Women's inclusion as a "Standing Invitee" to Inter-Agency Standing Committee meetings based on UN Women's significant and increasing humanitarian activities. We believe that an increasingly closer partnership between the two will enhance the efforts of both organizations.

We commend UN Women's continuing dedication to ending gender-based violence. We are proud to be supporting UN Women's projects to address such violence in Mozambique and Tanzania, as well as through the Safe Cities Initiative in India, with two significant voluntary contributions. We look forward to the results of the Global Study on Women, Peace and Security.

UN Women's work to advance the status of indigenous women and girls is another area we would like to highlight. We welcome contributions to the planning for next week's World Conference on Indigenous Peoples and look forward to the high-level side event it is hosting at the International Forum on Indigenous Women.

We welcome UN Women's ongoing collaboration with Justice Rapid Response to train gender experts and place them on a roster for rapid deployment to investigate gender-based crimes during conflict. The experts trained in these courses come from all regions of the world, and those who successfully complete the training will become part of a special joint JRR-UN Women roster, making them available for rapid deployment at the request of Governments, as well as the United Nations, the International Criminal Court, and other international institutions with jurisdiction to carry out such investigations. There have already been several successful rapid deployments of these experts to Commissions of Inquiry for Syria and North Korea, and UN Women has matched every request it has received for support. We will continue to emphasize the need for further investments in such a creative tool.

Regarding evaluation, the United States strongly supports efforts to make UN Women's programs ever more effective and closely tailored to their objectives. Given our commitment to UN Women's success, we underscore our view that the basis for success lies in a methodologically sound, rigorous, and systemic evaluation of programs. We thank UN Women, therefore, for integrating a meta-analysis into its Corporate Evaluation plan. This is a useful way to review findings from decentralized evaluations and identify common threads.

Sufficient investment in monitoring and evaluation and other knowledge management systems, within existing resources, is critical to the success of future programs. We note that systemic weaknesses have been uncovered in UN Women's monitoring and evaluation practices, and ask UN Women to outline the steps being taken to address these issues. In addition, UN Women should consistently use measurable results frameworks based on realistic goals and objectives.

We also stress our continuing appreciation for UN Women's commitment to manage its funds and administer its programs with the greatest possible level of transparency. The United States greatly values the work of the UN system's auditors in providing oversight to UN Women. UN Women's speedy implementation of the Executive Board's decision to make all internal audit reports publicly available is a positive step toward increasing organizational transparency and accountability. This practice will undoubtedly bring further insight into the operations of UN Women and allow us to better address critical systemic weaknesses. We take approving note of UN Women's dedication to timely implementation of this decision.

We commend UN Women for its work to implement the regional architecture, including by developing performance indicators for it. As UN Women continues to implement the regional architecture, it should also establish effective oversight controls and provide staff with proper training on delegation of authority and risk management. Doing so will make the regional architecture more successful and sustainable.

* * * *

B. PALESTINIAN MEMBERSHIP IN INTERNATIONAL ORGANIZATIONS

See Chapter 4 for a discussion of the United States response to Palestinian attempts to accede to treaties.

C. INTERNATIONAL COURT OF JUSTICE

On February 8, 2014, Secretary of State John Kerry issued a press statement on the nomination of Joan E. Donoghue to the International Court of Justice. Secretary Kerry's statement is excerpted below and available at www.state.gov/secretary/remarks/2014/02/221485.htm.

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* * * *

I am delighted to announce the formal nomination of Joan E. Donoghue by the U.S. National Group to serve a second term as Judge on the International Court of Justice, an institution that plays a vital role in international dispute resolution and in the development of international law.

Judge Donoghue has had a long and distinguished career in international law.

From 2007 to 2010, she was the State Department's senior career lawyer, serving as the Acting Legal Adviser for the first six months of the Obama Administration. She has taught at several U.S. law schools and has lectured widely on international law and adjudication.

Since joining the Court in 2010, Judge Donoghue has demonstrated exceptional intelligence, integrity and independence in addressing the diverse and complex issues that come before the Court. Her knowledge, temperament, and commitment to the rule of law make her an outstanding choice for this important position.

I strongly support her election for a second term.

* * * *

Judge Donoghue was re-elected to the ICJ on November 6, 2014 in elections held in the UN General Assembly and Security Council. The Department of State issued a media note on November 7, 2014 congratulating Judge Donoghue and Mohamed Bennouna from Morocco, Kirill Gevorgian from Russia, and James Crawford from Australia, who were also elected as ICJ judges. The November 7 media note, available at *www.state.gov/r/pa/prs/ps/2014/11/233853.htm*, also states:

> The United States continues to strongly support the ICJ as part of our commitment to promoting international peace, conflict resolution, rule of law, and justice. Judge Donoghue's exemplary background reflects the importance and seriousness that the United States places on the ICJ and its work.

D. INTERNATIONAL LAW COMMISSION

1. ILC's Work on Expulsion of Aliens, Protection of Persons in the Event of Disasters, and Other Topics

On October 28, 2014, Mary McLeod, Acting Legal Adviser for the U.S. Department of State, addressed the UN General Assembly Sixth Committee session on the report of the International Law Commission ("ILC") on the work of its 66th session. Ms. McLeod's remarks, addressing the topics of "Expulsion of Aliens" and "Protection of Persons in the Event of Disasters," as well as other topics, are excerpted below and available at *http://usun.state.gov/briefing/statements/234021.htm*.

_____

* * * *

With respect to the topic of "Expulsion of Aliens," the United States congratulates the International Law Commission and, in particular, Special Rapporteur Maurice Kamto, for

completing its work on the topic through the adoption on second reading of a set of 31 draft articles, together with commentaries.

Earlier this year, the United States submitted extensive comments on the draft articles as adopted on first reading, as did many other Governments.* In many respects, the Commission appears to have given serious consideration to concerns expressed by Governments, and in particular we are pleased to see that the final draft articles reflect several of our suggestions.

We also appreciate that the Commission expressly acknowledges at several points throughout the commentary that much of this project reflects progressive development. Indeed, the opening paragraph to the general commentary correctly indicates that "the entire subject area does not have a foundation in customary international law or in the provisions of international conventions of a universal nature."

Even with this characterization, however, we continue to have significant concerns about several of the draft articles in their final form, and maintain our view that the draft articles, even as an aspirational document, do not overall strike the proper balance between the important goal of protecting aliens and the State's sovereign prerogative, responsibility and ability to control admission to its territory and to enforce immigration laws.

I would refer colleagues to our full written comments available on the ILC website, as many of them are still applicable, but will highlight a few of our most significant concerns. We still do not agree with the discussion of disguised expulsion contained in Articles 2 and 10 as drafted. For example, we do not believe "tolerance" of the actions of non-state actors generally gives rise to state responsibility. Article 12 on circumvention of extradition is overly vague and fails to account for a State's prerogative to use a variety of legal mechanisms to effect transfers of criminals wanted by a foreign country. In addition, Articles 23 and 24 are still problematic to the extent they extend *non-refoulement* protections to situations beyond what reflects established international law and beyond what the United States views as desirable law.

In some instances where the Commission did make laudable changes, they did not go far enough. For instance, while the text of Article 14 on nondiscrimination has improved, the Commentary still suggests an overbroad limitation on States' ability to treat groups differently with respect to expulsion where there is a rational basis for doing so. Additionally, although the Commission decided to limit Article 23's *non-refoulement* obligation to threats to life rather than also threats to freedom, the list of grounds on which such threats could be based still goes far beyond those contained in the Refugee Convention and its Protocol, without any clear justification in law or practice.

We also note that the Commission has addressed concerns with numerous articles that appeared to conflict with widely-adopted conventions by converting them to "without prejudice" provisions. While this solution largely resolves these legal concerns, it also highlights the extent to which existing treaties already cover many of the subjects addressed by these draft articles, reducing the imperative for an additional instrument in this field.

At the same time, many of the proposals for progressive development are clearly controversial and would need to be subjected to thorough governmental discussion and negotiation before any such proposed rule could be recognized as a rule of international law. Article 27, on the suspensive effect of an appeal, and Article 29, which would create an unprecedented right of admission, are just two examples of proposals that would require significant additional consideration by States.

* Editor's note: The U.S. comments referred to by the Acting Legal Adviser are discussed in Section 7.D.5., *infra*.

Given this range of concerns, and in light of previous comments by the U.S. and other governments, we would have strongly preferred that the Commission issue these in a different form, such as guidelines or principles. We do not believe that the draft articles should be considered as the basis for negotiation of a new convention in this field, as no such instrument is needed given the several multilateral treaties that already exist in this field. Rather, we believe these draft articles should be brought to the attention of states for their further consideration.

Mr. Chairman, on the topic of "Protection of Persons in the Event of Disasters," the United States appreciates the work of the Commission and in particular the efforts of the special rapporteur, Mr. Eduardo Valencia-Ospina, on the 21 draft articles and commentaries adopted on first reading this summer.

We look forward to providing written comments and observations on the draft articles and commentary by 2016 in response to the Commission's request. In the meantime, we remain concerned that several of the draft articles appear to be attempts to progressively develop the law without being clearly identified as such. For example, we do not accept the assertion in Draft Article 11, entitled "Duty to reduce the risk of disasters," that each state has an obligation under international law to take the necessary and appropriate measures to prevent, mitigate, and prepare for disasters. While the United States appreciates the efforts the Commission has made to document laudable individual and multilateral measures taken by states to reduce the risk of disasters, we do not believe that these efforts establish widespread state practice undertaken out of a sense of legal obligation.

Mr. Chairman, with respect to other decisions and conclusions of the Commission, let me make brief remarks about two additional topics.

First, with respect to the topic of "Crimes Against Humanity," the United States looks forward to a thorough discussion of the topic now that the Commission has added it to its active agenda. We support and very much welcome the appointment of Sean Murphy as Special Rapporteur and the considerable expertise that Professor Murphy will bring to bear in thinking critically about the difficult questions that this topic implicates.

As the description of this topic noted, the widespread adoption of certain multilateral treaties regarding serious international crimes—such as the 1948 Convention on the Prevention and Punishment of the Crime of Genocide—has been a valuable contribution to international law, including by promoting the repression of such offenses and creating a basis for accountability. Because crimes against humanity have been perpetrated in various places around the world, the United States believes that careful consideration and discussion of draft articles for a convention on the prevention and punishment of crimes against humanity could also be valuable, and we look forward to following the ILC's work on this subject now that it is on its active agenda.

This topic's importance is matched by the difficulty of many of the legal issues that it implicates, and we urge that all of these issues be thoroughly discussed and carefully considered in light of States' views as this process moves forward.

Second, Mr. Chairman, we note the addition of the topic of *jus cogens* to the Commission's long-term work programme. We thank Professor Tladi for his work to identify a number of very important issues in his clear and concise syllabus describing the topic, and we thank him also for his informative description of the procedural history of the Commission's consideration of this topic. As he notes, the Commission considered addressing this topic in 1993, but decided not to do so. The chair of the working group that considered the proposal, Derek Bowett, expressed doubt that addressing the topic would serve a useful purpose at that

stage, in light of the insufficient practice that existed on the topic. We believe the time is still not yet ripe for the Commission to address this topic.

The Commission is currently working on two topics that address key sources of international law—subsequent agreements and subsequent practice in relation to the interpretation of treaties, and the identification of customary international law. These sources implicate many issues that would also be relevant to consideration of *jus cogens*. For example, the Commission is currently considering whether and how silence by a treaty party may constitute practice for purposes of establishing acceptance of an interpretation of a treaty. Likewise, the Commission is currently considering what actions constitute practice for the purposes of customary international law, how to describe the rule that such practice must be "general," whether any particular duration of practice is required to form a customary rule, and the relationship between practice and *opinio juris*. Such issues are closely enough related to *jus cogens* that the original proposal for the Commission's topic of customary international law left open whether it would include *jus cogens*, and only after launching the project has the Commission decided not to include it. Indeed, the first report of the special rapporteur on customary international law indicated that "one's view as to the relationship between *jus cogens* and customary international law depends, essentially, on the conception that one has of the latter".

While the international law rules regarding formation of *jus cogens* norms may differ from these other sources, many concepts that the Commission is already considering are of relevance to a study of *jus cogens*. We are concerned that having three overlapping ILC projects addressing sources, all proceeding in parallel, risks confusion and inconsistency, and at a minimum would be inefficient.

In addition, it is not clear that practice on this topic has developed sufficiently since 1993 to justify a conclusion different than the one reached at that time. The syllabus for the topic presents a helpful discussion of some important issues, including an overview of the International Court of Justice's treatment of *jus cogens* in certain cases. But the syllabus references few examples of State practice since 1993 that would support the conclusion that the situation has changed and that this topic is now ripe for consideration.

Accordingly, we do not believe it would be productive for the Commission to add this topic to its active agenda at the present time.

* * * *

2. ILC's Work on the Obligation to Extradite or Prosecute, Subsequent Agreements and Subsequent Practice in relation to the Interpretation of Treaties, Protection of the Atmosphere, and Immunity of State Officials from Foreign Criminal Jurisdiction

On October 31, 2014, Mark Simonoff, Minister Counselor for Legal Affairs for the U.S. Mission to the UN, addressed the 69th General Assembly Sixth Committee on the work of the International Law Commission ("ILC"). Mr. Simonoff discussed the ILC's work on "The Obligation to Extradite or Prosecute," "Subsequent Agreements and Subsequent Practice in relation to the Interpretation of Treaties," "Protection of the Atmosphere," and "Immunity of State Officials from Foreign Criminal Jurisdiction." Mr. Simonoff's

remarks are excerpted below and available at *http://usun.state.gov/briefing/statements/234013.htm*.

* * * *

With respect to the topic entitled "The Obligation to Extradite or Prosecute (*aut dedere aut judicare*)," we would like to thank the Commission for its final report. The report ably recounts the extensive and useful work by the Commission, which included a survey of the diverse array of treaty instruments containing such an obligation, a typology of the extradite or prosecute provisions contained in multilateral instruments, the implementation of these provisions, an analysis of gaps in the existing treaty regime and of the relationship of the obligation to extradite or prosecute with other obligations, and a discussion of important developments such as the International Court's 2012 judgment on *Questions Relating to the Obligation to Prosecute or Extradite*.

As we have explained before, while we consider extradite or prosecute provisions to be an integral and vital aspect of our collective efforts to deny offenders, including terrorists, a safe haven, and to fight impunity for such crimes as genocide, war crimes and torture, there is no obligation under customary international law to extradite or prosecute individuals for offenses not covered by treaties containing such an obligation. Rather, as the Commission notes in its Report, efforts in this area should focus on specific gaps in the existing treaty regimes. Accordingly, we commend the Commission for its report, which provides an appropriate conclusion for this project.

Mr. Chairman, turning to the topic of "Subsequent agreements and subsequent practice in relation to the interpretation of treaties," we would like to thank Special Rapporteur Georg Nolte and the Commission for their extensive and valuable work on this topic.

In reviewing the Special Rapporteur's second report as well as the draft conclusions and commentary provisionally adopted by the Commission, the United States welcomes the situating of the topic in the framework of the rules on treaty interpretation reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties, as well as the recognition of the need to distinguish between the interpretation of a treaty and the rules on amendment of a treaty as reflected under Article 39. While we believe that more work may need to be done on that distinction, we are pleased to see the attention given to the issue.

Mr. Chairman, while the United States welcomes much of the language in the Commission's draft conclusions, we continue to have some concerns. We will touch on some of those issues now, beginning with one general point. In studying the conclusions and commentary, it appears that in a number of cases the conclusions rely too heavily on the commentary to flesh out the meaning of the black letter rule set forth in the draft conclusions. We are concerned that this results in undesirable ambiguity in the meaning of the conclusions, which is only clarified in the commentary. Since these conclusions may well be read by practitioners and perhaps even reproduced without the commentary, we believe the better practice is to ensure that important limitations and explanations are included in the conclusions themselves. In addition, the Commission might consider including in an introductory commentary a statement that the commentary is integral for understanding the meaning of the conclusions.

Draft Conclusion 9 as adopted by the Commission illustrates this point. Paragraph 2 of that conclusion provides that the number of parties that must engage in a subsequent practice to establish an agreement as to the interpretation of a treaty may vary and that silence by a party may constitute acceptance of the practice. However, the draft Conclusion fails to make clear that in one way or another—be it by engaging in the consistent practice or by acceptance of the practice of others—all the parties to the treaty must manifest their agreement with the interpretation at issue. For that important clarification, one must study the accompanying commentary. Similarly, a reader must look to the commentary to find the important caution that a State's acceptance of a practice by way of silence or inaction "is not easily established." The United States would have preferred to see both of these points made clearly in the conclusions themselves.

Mr. Chairman, with respect to the Commission's draft Conclusion 10 on decisions adopted within the framework of a Conference of States Parties, we are concerned that the draft conclusion and commentary may suggest that the work of such Conferences generally involves acts that may constitute subsequent agreements or subsequent practice in the interpretation of a treaty. Subject to the terms of the treaty at issue, it is possible that a COP may produce a decision that constitutes a subsequent agreement of the parties or may engage in actions giving rise to subsequent practice, where such a decision or action reflects the agreement of all the treaty's parties (and not just those present at the COP). However, these results are by far the exception, not the rule, with regard to the activities of COPs. We believe that it is important that the fairly general language of draft Conclusion 10 be modified to indicate that these results are neither widespread nor easily demonstrated.

Mr. Chairman, before concluding on this topic, the United States would like to make a related comment about the Special Rapporteur's pending requests to States regarding whether the practice of an international organization may contribute to the interpretation of a treaty and whether pronouncements or other action by a treaty body give rise to subsequent agreements or subsequent practice relevant for the interpretation of a treaty. The United States looks forward to providing information to the Special Rapporteur on both of these issues. For now, we note that this project is concerned with subsequent agreements and subsequent practice as they relate to the rules set forth in the 1969 Vienna Convention and not the 1986 Vienna Convention. As such, for this project it is only the States Parties to a treaty that can enter into a subsequent agreement or engage in relevant subsequent practice. While it is possible for those parties to act through other bodies, like a plenary organ of the international organization or a COP as discussed a moment ago, it is the agreement of all the States Parties to the treaty at issue that must be demonstrated.

* * * *

Mr. Chairman, on the topic of "Protection of the Atmosphere," we have previously expressed concerns about the suitability of the topic. We fear that those concerns have been borne out in the first report of the Special Rapporteur, issued earlier this year.

Our original concerns—which were shared by a number of other countries—ran along two main lines.

First, we did not believe that the topic was a useful one for the Commission to address, since various long-standing instruments already provide not only general guidance to States in their development, refinement, and implementation of treaty regimes, but in many instances very

specific guidance tailored to discrete problems relating to atmospheric protection. As such, we were concerned that any exercise to extract broad legal rules from environmental agreements concluded in particularized areas would be infeasible and unwarranted, and potentially quite harmful if doing so undermined carefully-negotiated differentiation among regimes.

Second, we believed that such an exercise, and the topic more generally, was likely to complicate rather than facilitate future negotiations and thus to inhibit State progress in the environmental area.

Accordingly, we opposed inclusion of this topic on the Commission's agenda. Our concerns were somewhat alleviated when the Commission issued an understanding in 2013 that framed the topic narrowly. This understanding was apparently designed to limit the scope of work to areas where there might be some utility and to prevent the work from straying into areas where it might do harm.

Unfortunately, as is clear from the first report by the Special Rapporteur, and from the Commission's debate during its Sixty-Sixth Session, the Special Rapporteur did not adhere to the 2013 understanding. Indeed, the report evinced a desire to recharacterize the understanding altogether, and generally took an expansive view of the topic.

While we welcome the fact that the draft guidelines proposed in the first report were not sent to the drafting committee, we remain seriously concerned about the direction this topic appears to be taking.

We urge the Special Rapporteur, in his next report, to adhere to the letter and the spirit of the understanding that forms the basis for this work. A strict adherence to that understanding can help ensure that the Commission's work on this topic may provide some value to States, while minimizing the risk that it will complicate and inhibit important ongoing and future negotiations on issues of global concern. We look forward to seeing revisions along those lines.

Mr. Chairman, turning to the topic of Immunity of State Officials from Foreign Criminal Jurisdiction, we commend Special Rapporteur Concepción Escobar Hernández for the progress she has made on this important and difficult topic. We commend also the thoughtful contributions by the members of the ILC.

To date, the ILC has produced draft articles and commentary addressing the scope of the topic, addressing immunity *ratione personae*, and addressing some aspects of immunity *ratione materiae*.

As I pointed out last year, one of the challenges of this topic as it relates to immunity *ratione personae* has to do with the small number of criminal cases brought against foreign officials, and particularly against heads of State, heads of government, and foreign ministers—the officials sometimes collectively referred to as the "troika." The federal government of the United States has never brought a criminal case against a member of the troika. Nor do we believe that any state government within the United States has brought such a case.

The draft articles on immunity *ratione personae* provide for broad immunity for the troika. Indeed, the draft articles provide for absolute immunity for the troika during the term of office for all acts in a private or official capacity, regardless of whether they occurred during or before the term in office. Immunity for a sitting head of state for acts prior to taking office is consistent with state practice in the United States in civil cases against heads of state. For example, in a case brought in the United States [*Habyarimana v. Kagame*, 696 F.3d 1029 (10th Cir. 2012)], the Executive Branch submitted a suggestion of immunity on behalf President Kagame of Rwanda with respect to allegations against him that predated his presidency, and the

courts agreed. We note that the Special Rapporteur has not yet turned to exceptions, and we suggest that waiver may be the only exception for immunity *ratione personae*.

With respect to immunity *ratione materiae*, the ILC has drafted an article stating that State officials acting as such enjoy immunity from the exercise of foreign criminal jurisdiction. In doing so, the ILC has posited that immunity *ratione materiae* exists and is enjoyed by individuals who—according to the definition of "State official"—either represent the State or exercise State functions. This definition, as well as the phrase "acting as such," can be understood to mean that the acts for which immunity *ratione materiae* is available are those in which a State official either represents the State or—far more broadly—exercises State functions. Comment 11 to Article 2(e) says that "State functions" are to be understood to mean all the activities carried out by the State. This would appear to express a broad view of immunity *ratione materiae*—subject, of course, to exceptions and procedural requirements. Yet Comment 15 disclaims that the definition of "State official" has any bearing on the type of acts covered by immunity, and the acts covered by immunity are to be taken up at a later date. It will be important to resolve this ambiguity.

The other major areas yet to be addressed are exceptions to immunity and procedural aspects of immunity. Very broad immunity can be limited by exceptions or by strict procedural requirements. Accordingly, it is apparent that despite the impressive progress made by the Commission to date, a great deal of difficult ground remains to be covered.

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3. ILC's Work on Identification of Customary International Law, Provisional Application of Treaties, Protection of the Environment in Relation to Armed Conflicts, and Most-Favored-Nation Clause

On November 5, 2014, Stephen Townley, Counselor for Legal Affairs for the U.S. mission to the UN, delivered remarks at the 69th General Assembly Sixth Committee on the work of the International Law Commission ("ILC") during its 66th Session. In particular, Mr. Townley addressed the ILC's work on the following topics: "Identification of Customary International Law," "Provisional Application of Treaties," "Protection of the Environment in Relation to Armed Conflicts," and "Most-Favored-Nation Clause." Mr. Townley's remarks are excerpted below and available at *http://usun.state.gov/briefing/statements/233960.htm*.

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Mr. Chairman, with respect to the topic "Identification of Customary International Law," the United States thanks the Special Rapporteur, Sir Michael Wood, for his very impressive second report. That report reflects a tremendous amount of research and careful analysis, and is therefore a very significant contribution to the understanding of this important topic. We also appreciate the Draft Conclusions provisionally adopted by the Drafting Committee in July based upon Sir Michael's work.

We particularly welcome the clear and unambiguous incorporation into Draft Conclusion 2 of the "two-element approach" for identifying a rule of customary international law. We hope the commentary eventually developed will underscore both the importance of identifying actual practice (as distinct, for example, from statements about practice) and the fact that the two-element approach applies across all fields, as was done in the Special Rapporteur's second report.

While we believe that the Special Rapporteur and Drafting Committee have very successfully addressed a number of the key issues, we would like to raise a few concerns in the hope that we can contribute to improvement of the Commission's work on this important topic.

The United States is particularly concerned about the possible implications of the language in Draft Conclusion 4 that "it is primarily the practice of States that contributes to the formation…of rules of customary international law." We are concerned that the inclusion of the word "primarily" may be interpreted as meaning that the practice of non-state actors, including non-governmental organizations, corporations, and even natural persons, may be of relevance to a customary international law analysis. If the intent is to include such actors, we believe such an approach is misguided and unsustainable under any fair reading of customary international law. If the intent is to indicate that, in addition to the practice of States, in some circumstances the practice of international organizations may contribute to the formation of custom, we believe it would be helpful to state this much more clearly, as the current language is too ambiguous and open-ended. The Drafting Committee could consider re-drafting Paragraph 1 of Conclusion 4 to state that "The practice of States may constitute a general practice that, as one element, contributes to the formation, or expression, of rules of customary international law." Such a formulation properly emphasizes the centrality of States in the formation of this source of law, without creating confusion as to the relevance of other actors.

In addition, we are concerned that the treatment of international organizations together with States in Draft Conclusion 4 may be taken to suggest that these actors play the same roles with respect to the formation of custom, obscuring, in particular, significant limitations on the role of international organizations in this regard. For these reasons, we welcome the recognition by the Special Rapporteur and the Drafting Committee that more work needs to be done on the subject of the role of international organizations in the formation of custom.

In that regard, Paragraph 2 could be rephrased to provide that, in addition to State practice, the practice of international organizations may contribute—in some defined circumstances—to the formation of customary international law, perhaps with a cross-reference to a later Draft Conclusion that addresses the issue in greater detail. While we are not persuaded as yet that the practice of international organizations is of general relevance to the identification of custom, we are open to the possibility that there may be circumstances in which some activities of international organizations may contribute to the formation of customary international law. We, therefore, look forward to the Special Rapporteur's future work on this issue.

Mr. Chairman, the United States notes that the Special Rapporteur and the Drafting Committee decided that the issue of "specially affected States" would not be addressed at this stage in the process. We believe that the role of the practice of such States in the identification of customary international law should be recognized and addressed in the final product of this exercise, so as to reflect accurately international law, given the well-established jurisprudence on this point. For similar reasons, we welcome the Special Rapporteur's indication that he intends to

cover the issue of "persistent objectors" in his third report and we look forward to that topic being addressed in the draft conclusions.

Mr. Chairman, with regard to question of what acts may constitute practice, the United States agrees that "[p]ractice may take a wide range of forms," including physical acts, verbal acts and—in some circumstances—inaction, as stated in Draft Conclusion 6. However, we believe that this conclusion could be strengthened by clarifying that whether any of the listed acts constitute State practice that would contribute to the formation of customary international law in any particular case would depend on the rule at issue and the context involved.

Mr. Chairman, that leads me to two final points of a more general nature. The first is that we understand that no definitive decision has yet been made as to whether this project should be in the form of draft conclusions and commentary and we support waiting until the end of the process before any such decision is made. If the final product of this exercise is to be conclusions and commentary, it will be important that the conclusions themselves be stated with sufficient clarity and completeness that they accurately reflect the relevant rule, since leaving important qualifications to the commentary risks them being far less accessible for practitioners and decision-makers.

An example is Draft Conclusion 8, which provides that "[t]o establish a rule of customary international law, the relevant practice must be general, meaning that it must be sufficiently widespread and representative, as well as consistent." The Draft Conclusion contains no sense of what is meant by "sufficiently" widespread and representative; indeed, someone might take the view that the practice of just a few States from different regions of the world is "sufficient." We believe that so important a question as the extent of practice that is required for a customary rule to form should be addressed in the body of the conclusion and not simply left to the commentary. Moreover, we would suggest that consideration be given to incorporating the standard articulated by the International Court of Justice in the *North Sea Continental Shelf* judgment of "extensive and virtually uniform" practice, as that provides much greater guidance regarding the international law requirement.

Our second point of a general nature relates to the broader context in which customary international law is formed. Most cooperation and interaction among States—even when it produces similar patterns of conduct—does *not* result in practice of sufficient density and extent, or of appropriate character, to give rise to rules of customary international law. Only when the strict requirements for extensive and virtually uniform practice of States, including that of any specially affected States, in conjunction with *opinio juris* are met is customary international law formed. As such, the creation of customary international law is not to be inferred lightly, a point that may be lost in the current formulation of these Draft Conclusions. Satisfying such requirements, and recognizing the rule on the persistent objector, are critical to give effect to a central foundation of international law, which is that States generally may not be bound to legal obligations without their consent. In this connection, we believe that the Commission's work on this topic would benefit from further analysis of the cases in which a customary rule was found not to have developed due to the absence of the requisite practice or *opinio juris*, to help better illustrate the relatively high threshold required to establish that a rule of customary law has been formed.

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Mr. Chairman, turning to the topic of "Provisional Application of Treaties," the United States thanks Special Rapporteur Juan Manuel Gómez-Robledo for his second report and appreciates the many ways in which it reflects the views from States during the past year, as well as substantial additional work on the subject. That said, we think that the Special Rapporteur was correct in not proposing draft conclusions or guidelines at this stage, as a number of issues covered by the report require additional views and study by States and within the Commission, as reflected in the many and varying views expressed during the debate within the Commission this summer.

As the United States has indicated previously, we believe the meaning of "provisional application" is well-settled—"provisional application" means that States agree to apply a treaty, or certain provisions, as legally binding prior to the treaty's entry into force, with the distinction being that these obligations can be more easily terminated. Therefore, we were pleased with the repeated recognition in the second report that "the provisional application of a treaty undoubtedly creates a legal relationship and therefore has legal effects" and that these effects go beyond the obligation not to defeat the object and purpose of a treaty.

The United States also believes that—whatever the final form of the ILC's work on this topic—it should be fully consistent with Article 25 of the Vienna Convention on the Law of Treaties, in order to provide useful guidance on the use and consequences of provisional application. For this reason, we would like a more thorough explanation of the report's suggestion that a party seeking to terminate provisional application of a treaty may not do so arbitrarily and must explain its decision, as Article 25 does not include those requirements.

Mr. Chairman, the United States disagrees with certain aspects of the second report, including the suggestion that international law rules regarding the unilateral acts of States (and the Commission's work on the subject) have general relevance to the subject of provisional application of treaties. While the United States agrees that States may in some, limited cases unilaterally undertake to apply a treaty provisionally, we disagree that that is the appropriate framework for analyzing the vast majority of cases of provisional application. In most cases, provisional application creates a treaty-based regime between or among States, not just obligations for one State.

On a related point, the second report asserts that "the form in which the intention to apply a treaty provisionally is expressed will have direct impact on the scope of the rights and obligations assumed by the State in question." That statement is not correct as a general matter; the form by which the State's intention is expressed does not have an impact on the scope of the rights and obligations, any more than the form by which a State ratifies or accedes to a treaty. Rather, what may affect those rights and obligations is the text of the treaty or other instrument that allows for provisional application, as well as any text associated with a State's acceptance of provisional application. The one exception would appear to be the unusual circumstance where provisional application is truly the result of a unilateral act. However, in that case, the State's obligations would not be altered, but only the rights it would have vis-à-vis other States.

The United States also doubts the conclusion that "the intention to apply a treaty provisionally may be communicated … tacitly." The practice cited by the Special Rapporteur for this assertion does not involve "tacit" acceptance of provisional application of a treaty as we would understand it. Rather, it involves a treaty in which States expressly agreed that its provisions would be applied provisionally as of a specified date, but which allowed States to opt out of that provisional application obligation by notifying the depositary in writing. As a general proposition, the same requirements that apply to a State's consent to a treaty, including those

reflected in Article 11 of the Vienna Convention of the Law of Treaties, also apply to its consent to apply a treaty provisionally.

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On the topic of "Protection of the Environment in Relation to Armed Conflicts," the United States notes with interest Special Rapporteur Marie Jacobsson's completion of the first report addressing the first temporal phase, the period before an armed conflict. The United States recognizes the deleterious effects armed conflict can have on the environment, and we believe this is an issue of great importance. Indeed, we reaffirm that protection of the environment during armed conflict is important for a broad range of reasons, including civilian health, economic welfare, and ecology. We also reaffirm the importance of applicable rules of armed conflict that have the effect of protecting the environment.

However, we are concerned with the first report's effort to determine "principles and concepts" of international law that may continue to apply during an armed conflict. As a threshold matter, we view efforts to identify, extract, and apply broad concepts from international environmental law as less useful to the topic than assessing the provisions within the law of armed conflict related to the protection of the environment. In addition, it seems inevitable that this approach would unnecessarily draw the Commission into issues regarding the concurrent application of bodies of law other than the law of armed conflict during armed conflict that will be very difficult to navigate successfully. Further, the manner in which the first report characterizes some of these concepts, including the so-called "principles of prevention and precaution," do not in our view reflect international law. Moreover, the first report invokes the concept of "sustainable development" and addresses several issues—such as indigenous peoples and environmental rights—that appear less useful for identifying legal protections of the environment with respect to armed conflict.

Notwithstanding such concerns, we welcome the Special Rapporteur's decision to focus her second report on identifying existing rules and principles of the law of armed conflict related to the protection of the environment, which may reflect how concepts and principles relevant in peacetime have been adapted to circumstances of armed conflict. We note, however, that the task of identifying existing rules could prove less helpful for the topic should the ILC attempt to determine whether provisions of certain treaties reflect customary international law. We welcome the Special Rapporteur's recognition that it is "not the task of the Commission to modify . . . existing legal regimes" and believe this is an important principle for it to follow as it pursues its work on this topic.

Mr. Chairman, with respect to the "Most-Favored-Nation Clause" topic, we appreciate the extensive research and analysis undertaken by the Study Group, and wish to recognize Professor Donald McRae in particular for his stewardship of this project as Chair of the Study Group, as well as the other members of the Commission who have made important contributions in helping to illuminate the underlying issues.

We support the Study Group's decision not to prepare new draft articles or revise the 1978 draft articles, and instead to summarize its study and description of current jurisprudence in a final report. Most favored nation clauses are a product of specific treaty negotiation and tend to differ considerably in their language, structure, and scope. They also are dependent on other provisions in the specific treaty in which they are located, and thus resist a uniform approach. We continue to encourage the Study Group in its endeavors to study and describe current

jurisprudence on questions related to the scope of most favored nation clauses in the context of dispute resolution, while heeding the distinctions between the investment and trade contexts. This research can serve as a useful resource for governments and practitioners who have an interest in this area. We look forward to seeing the final report.

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4. ILC's Work on Responsibility of International Organizations

John Arbogast, Counselor for Legal Affairs for the U.S. Mission to the UN, commented on the work of the ILC on the responsibility of international organizations at the 69th General Assembly Sixth Committee session on October 23, 2014. Mr. Arbogast's remarks are excerpted below and available at *http://usun.state.gov/briefing/statements/234020.htm*.

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As we have said before, we are pleased that the General Commentary introducing the draft Articles recognizes the scarcity of practice in this area and that many rules contained in these draft articles fall into the category of progressive development rather than codification of the law. Indeed, we agree with the Commission's assessment that the provisions of the present draft articles do not reflect the current law in this area to the same degree as the corresponding provisions on state responsibility. That assessment must be kept in mind when considering the cross-references from these draft articles to the articles and commentary on state responsibility, and whether these draft articles sufficiently reflect the differences between international organizations and states.

We also agree with the General Commentary that there exists great diversity among international organizations, which of course operate at the global, regional, sub-regional, and even bilateral levels, with important structural differences, and an extraordinary range of functions, powers, and capabilities, typically driven by each organization's unique charter. Given these differences, the principles described in some of the draft articles—for example, those addressing countermeasures and self-defense—likely do not apply generally to international organizations in the same way that they generally apply to states. Indeed, for all of the draft articles, the *lex specialis* rule set forth in Article 64 is of extraordinary importance. Moreover, in connection with this rule, there may be differences in the way rules on responsibility operate as between an international organization and its members, as opposed to how those rules operate for the international organization in other settings.

We continue to believe that the draft articles should not be transformed into a Convention.

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5. ILC Draft Articles on the Expulsion of Aliens

On March 7, 2014, the United States provided its comments on the draft articles on expulsion of aliens, in response to a request from the UN Secretariat. The comments include general, introductory observations as well as specific article-by-article comments. The U.S. comments are available in full at *www.state.gov/s/l/c8183.htm*. Excerpted below are the general observations by the United States regarding the draft articles.

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The United States appreciates the opportunity to provide written comments on the International Law Commission's Draft Articles on the Expulsion of Aliens, and associated Commentary, which were adopted on first reading in July 2012. These Draft Articles address an important area of international relations, one that implicates both the core sovereign prerogative of every State to control the presence of non-nationals in its territory and the protection of those persons from mistreatment in the course of carrying out removals. The United States recognizes and appreciates the efforts of the Commission, and in particular Special Rapporteur, Maurice Kamto, to take into account the views of States and divergent practices found within national legal systems.

At the same time, the United States has a number of general concerns with the Draft Articles. First, these Draft Articles do not seek merely to codify existing law, but instead are an effort by the Commission to progressively develop international law on several significant issues. Key aspects of the Draft Articles, such as their expansion of non-refoulement protections, deviate significantly from the provisions of widely-adhered-to human rights treaties and from national laws and jurisprudence. While there are a few instances in which the Commentary recognizes that aspects of the Draft Articles reflect progressive development, these are insufficient and leave the incorrect impression that all the other provisions within the Draft Articles reflect codification. The Draft Articles even risk generating confusion with respect to existing rules of law by combining in the same provision elements from existing rules with elements that reflect proposals for progressive development of the law.

Second, although there are elements within these Draft Articles to which the United States would not object, or might even support, we do not believe that, viewed as whole, they currently strike a proper balance in dealing with the competing interests in this field, especially to the extent they advocate certain protections for individuals that unduly restrain States' prerogative and responsibility to control admission to, and unlawful presence in, their territories.

Third, we remain skeptical of the wisdom and utility of seeking to augment in this manner well-settled, universal rules of law that exist in broadly ratified human rights conventions. Those existing conventions, including the various conventions containing non-refoulement provisions, already provide the legal basis for achieving key objectives of these Draft Articles. Problems of mistreatment of persons in this area largely arise not from the lack of legal instruments, but the failure to abide by those instruments, a problem that these Draft Articles do not and cannot solve.

In light of the above concerns, the United States does not believe that this project should ultimately take the form of Draft Articles. Given that several multilateral treaties already exist in this field, we question how much support would exist for negotiating a new convention based on these Draft Articles. Therefore, we recommend the Commission consider converting these Draft Articles into another more appropriate form, such as principles or guidelines. If these do remain as Draft Articles, the United States strongly recommends that the Commentary include a clear statement at the outset that they substantially reflect proposals for progressive development of the law and should not, as a whole, be relied upon as codification of existing law.

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6. ILC's Work on the Formation and Evidence of Customary International Law

The United States also responded to a request from the ILC for information on its views relating to the formation of customary international law ("CIL") and the types of evidence for CIL. That response, submitted in June 2014, is excerpted below and available at *www.state.gov/s/l/c8183.htm*.

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This response includes selected statements in which some part of the United States' analysis regarding the formation or evidence of CIL is explained. Each example below reflects our view in the specific situation addressed, based on past circumstances and the state of the law as it existed at that time. This list does not capture every instance in which the United States has expressed its views regarding the formation and evidence of CIL generally or taken a position on whether a specific rule constitutes a rule of CIL. In preparing this response, we have focused on views of the Executive branch of the U.S. government that have not already been cited by the Special Rapporteur in the preliminary report on this topic, which we believe will be of most use to the Commission in its work.

This response draws extensively from the Digest of United States Practice in International Law, which is produced annually by the State Department's Office of the Legal Adviser. …

Examples of United States Government Statements Relating to the Formation and Evidence of Customary International Law

1. Statement by the Government of the United States in the United Nations General Assembly's Sixth Committee on the Report of the International Law Commission on the Work of its Sixty-Fourth Session, November 5, 2012 (addressing the Commission's work on the obligation to extradite or prosecute), *available at* http://usun.state.gov/briefing/statements/200301.htm .

2. Submission of the United States of America, *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23 (2012), *available at* http://www.state.gov/documents/organization/201834.pdf.
3. Response of the Government of the United States of America to the Inter-American Commission on Human Rights regarding juveniles sentenced to life without parole (April 2007), *available at* http://2001-2009.state.gov/s/l/2007/112681.htm.
4. Counter-Memorial of Respondent United States of America, *Glamis Gold, Ltd. v. United States of America* (2006), at Part IV(A) and IV(C), *available at* http://www.state.gov/documents/organization/73686.pdf.
5. Written Statement of the Government of the United States of America concerning the Request of the United Nations General Assembly for an Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, June 20, 1995, at pp. 8-9, *available at* http://www.icj-cij.org/docket/files/95/8700.pdf.

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E. OTHER ORGANIZATIONS

1. Organization of American States

The State Department issued a fact sheet after the Organization of American States ("OAS") concluded its 44th General Assembly in Asuncion, Paraguay in June 2014. The June 20, 2014 fact sheet summarizes key outcomes of the 44th General Assembly and is available at *www.state.gov/r/pa/prs/ps/2014/06/227405.htm*.

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Advances on OAS Reform and Strategic Vision: The United States and its partners in the Americas forged a resolution on a new strategic vision statement declaring the OAS "the hemispheric political forum inclusive of all the countries of the Americas, committed to the strengthening of democracy, the promotion and protection of human rights, the advancement of integral development, and the fostering of multidimensional security, all equal and interdependent, with justice and social inclusion, for the benefit of the peoples of the Americas."

As part of our shared efforts to advance the implementation of this vision, the United States welcomes the decision of the General Assembly to develop supporting guidelines, strategic objectives, and work plans. The United States also looks forward to the presentation of a Management Modernization Plan by the Secretary General for consideration by a Special General Assembly later this year.

Support for Financing of the 2015 OAS Program Budget: As a concrete manifestation of our continued support for the OAS and its important work in the Americas, the United States

endorsed the General Assembly's approval of a 1.5% increase to the Organization's 2015 program budget.

As the largest financial contributor to the OAS, the United States is firmly committed to supporting an Organization that values accountability to its member states and transparency in its operating procedures. We look forward to working with other member states to consolidate this process, adjust the current OAS scale of assessments, and transform the OAS into a more vibrant and efficient institution that supports the core values of its founding Charter, representative democracy, the exercise of human rights, security for those most vulnerable and sustainable development for all.

Strengthening the Inter-American Human Rights System: The United States, working with key partners, also supported a resolution that reaffirms the importance of working together to further strengthen the independent Inter-American Commission on Human Rights (Commission), through continued dialogue among member states, within the Commission, and with civil society. Consistent with the OAS Charter, the United States remains committed to strengthening the Commission's work and its critical role in advancing the promotion and protection of human rights throughout the Americas. We are proud of our record of support for the work of the Commission and its Rapporteurs, including the important efforts of the Special Rapporteurship for Freedom of Expression.

Support for Civil Society and Freedom of Association and Assembly: The United States welcomed the adoption of the Strategy for Strengthening Civil Society Participation in OAS Activities, which details specific steps for ensuring greater participation of civil society organizations in the work of the OAS.

The General Assembly, with strong backing from the United States, also decided to enhance OAS efforts to exchange regional experiences, viewpoints, and good practices on the protection of human rights defenders in the Americas. This mandate serves to complement the resolution previously introduced by the United States and adopted by the 2011 OAS General Assembly, "Promotion of the Rights to Freedom of Assembly and of Association in the Americas" (AG/RES. 2680).

U.S. Support for Social Inclusion: The United States actively supported OAS efforts to promote respect for the human rights of people of African descent, including recognition of the International Decade for People of African descent in the Americas and the exchange of best practices to promote inclusion. The U.S. co-sponsored a resolution focused on promoting the rights of persons with disabilities, emphasizing access to education, training and employment opportunities. The United States was also in the forefront of a renewed OAS effort to promote respect for the rights of indigenous peoples and reaffirmed support for the human rights of Lesbian, Gay, Bisexual, and Transgender and Intersex (LGBTI) persons.

Support for the OAS Mission to Support the Peace Process in Colombia (OAS/MAPP): Reflecting strong support for the important and ongoing work of the OAS Mission to Support the Peace Process (OAS/MAPP) in Colombia, the United States announced a new contribution in support of the OAS/MAPP Mission in the amount of $420,000. This will enable the OAS/MAPP Mission to advance its efforts in the areas of land restitution; reparation, truth and reconciliation; justice, peace, and transitional justice; and disarmament, demobilization, and reintegration. The OAS/MAPP Mission was established in 2004, with the strong support of the United States.

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2. Foreign Missions Act Applicable to International Organizations

On January 8, 2014, Under Secretary of State for Management Patrick Kennedy made the determination under Section 209(a) of the Foreign Missions Act ("FMA"), 22 U.S.C. 4309(a), that all provisions of the FMA should apply to international organizations. 79 Fed. Reg. 2926 (Jan. 16, 2014). Excerpts follow from the Federal Register notice of the determination.

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Section 209(a) of the Foreign Missions Act (22 U.S.C. 4309(a)) (hereinafter "the Act'") authorizes the Secretary of State to make any provision of the Act applicable with respect to international organizations to the same extent that it is applicable with respect to foreign missions when he determines that such application is necessary to carry out the policy set forth in section 201(b) of the Act (22 U.S.C. 4301(b)) and to further the objectives set forth in section 204(b) of the Act (22 U.S.C. 4304(b)).

Section 209(b) of the Act (22 U.S.C. 4309(b)) defines "international organization" as (1) a public international organization designated as such pursuant to the International Organizations Immunities Act (22 U.S.C. Sec. 288 et seq.) or a public international organization created pursuant to a treaty or other international agreement as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs; and (2) an official mission (other than a U.S. mission) to such a public international organization, including any real property of such an organization or mission and including the personnel of such an organization or mission.

… I hereby determine that the application of all provisions of the FMA to international organizations, as that term is defined in section 209(b), is necessary to facilitate the secure and efficient operation of public international organizations and the official missions to such organizations, to assist in obtaining benefits, privileges and immunities for these organizations, and to require their observance of corresponding obligations in accordance with international law. It will also further the objectives set forth in section 204(b) of the Act as it will assist in protecting the interests of the United States.

Furthermore, I determine that the principal offices of an international organization used for diplomatic or related purposes, and annexes to such offices (including ancillary offices and support facilities), and the site and any building on such site which is used for such purposes constitute a "chancery'" for purposes of section 206 of the Act (22 U.S.C. 4306).

This action supersedes the determinations under the Foreign Missions Act relating to permanent missions to the United Nations made by the Acting Secretary of State on December 7, 1982, and by the Secretary of State on June 6, 1983.

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Cross References

Visa Determinations for proposed UN representatives, **Chapter 1.C.4.b.**
Palestinian Authority efforts to accede to treaties, **Chapter 4.A.1.**
ILC Draft Articles on Effects of Armed Conflict on Treaties, **Chapter 4.A.4.**
ILC's Work on Provisional Application of Treaties, **Chapter 4.A.5.**
Immunity of the UN, **Chapter 10.E.**
The UN Environment Programme ("UNEP"), **Chapter 13.A.2.**
Middle East peace process, **Chapter 17.A.**
UN peacekeeping reform, **Chapter 17.B.7.**
U.S. contributions to UN peacekeeping, **Chapter 17.B.8.**
Article 51 notifications to the UN, **Chapter 18.A.1.b.c.**